IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1975 OF 1995

Dr. Madhukar Joseph Pawar
(since deceased, by his legal heirs)
1. Shri Vinaykumar Madhukar Pawar,
At Bablibai Chawl, Staff Quarters,
Church Road, Miraj, Dist.Sangli;
& 2 ors. ... Petitioners

V/s

Vijaykant Nilkanthrao Ohal,
R/o Dr. Pawar Building,
Mangalwar Peth, Miraj. ... Respondent

Mr. Prataprao Shinde for the petitioners.

CORAM: P.V. KAKADE, J.

DATED: 22ND MARCH, 2006

ORAL JUDGMENT:

1. Heard learned counsel for the petitioners. None for the respondent.

2. The petition is aimed against the order passed by the Civil Judge, Jr. Divn., Miraj, dated 11.2.1994 holding that the compromise decree passed in R.C. Suit No. 160 of 1981 was not executable and, therefore, darkhast was dismissed.

3. It is an admitted as well as evident position that the petitioner landlord filed the suit against the respondent tenant for possession of the suit premises under the provisions of Bombay Rent Act. The said suit was settled between the parties on following terms:-

> (1) Plaintiff’s claim is admitted by the defendant.
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> (2) Agreed rent is to be determined as a Standard Rent.
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> (3) As defendant is feeling inconvenience at present, he is not vacating the possession of the suit property. However, as soon as defendant is accommodated somewhere he will hand over actual possession of the premises to the plaintiff but as the availability of the premises is not definite, period of time is not specifically stated.
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> (4) Whole amount of rent deposited in the Court is to be withdrawn by the plaintiff only. Defendant has no right in it.

(5) Defendant admits that out of the plaintiffs, Dr. Madhukar Pawar is the only landlord of property.

(6) Previous rent and the future rent is to be taken by the plaintiff Dr. Madhukar Pawar.

(7) With this and on the basis of this decree claim of the immediate possession is given up by the plaintiff at present.

(8) .....
(9) .....
(10) .....

Therefore, it is obvious that it was decided that due to immediate non-availability of suitable accommodation the respondent-defendant was given concession to extend its possession in the suit property and hence period of handing over of the possession was not specifically stated. On this ground also, claim for immediate possession was given up by the petitioner plaintiff.

This has happened in the year 1988 when the petitioner observed that the respondent was avoiding to hand over

possession of the suit premises. Finally he filed the execution proceeding in the year 1993 seeking possession of the suit premises from the respondent judgment debtor on the ground that inspite of having full opportunity to obey the decree, the respondent had not made any effort to find suitable accommodation and hence the decree for possession was sought to be executed.

4. The Trial Judge after hearing both parties came to the conclusion that when the time was not fixed by way of compromise decree and when decree holder failed to prove that defendant acquired alternative accommodation, then the decree holder was not right in seeking execution of the decree and, therefore, it was held that the decree was rendered not executable and dismissed the execution proceeding. Hence the petition.

5. At the outset, it may be noted that this is a fit case wherein the provision of Sec. 46 of the Contract Act could be looked into which stipulates that, where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation to the said section stipulates that, the question "what is a

reasonable time" is, in each particular case, a question of fact. Therefore, there is no doubt whatsoever that even though particular time was fixed for vacating the premises, it was expected to be executed within reasonable time. In other words, it was incumbent upon the respondent to honour a concession granted by the petitioner and to seek alternate accommodation within a reasonable time. No doubt the question as to what is reasonable time can be very well be settled because the five years' period is undoubtedly more than reasonable in order to seek alternate accommodation in the town like Miraj and, therefore, the Trial Court was in error in holding that decree was not executable.

6. It appears that the Trial Court was also called upon to discuss the issue regarding acceptance of rent subsequent to compromise decree in the Trial Court obviously for an attempt to plead creation of tenancy between the parties. However, that argument would not be available for the respondent plainly due to the reason that he was under the hammer of the Court which had passed the compromise decree in the above noted terms and, therefore, could not claim fresh tenancy.

7. Pending the petition, the petitioner has also filed

an affidavit supported by documentary evidence to show that the respondent has left the suit premises and shifted to another accommodation at Bungalow No.89 in Rama Udyan Campus, Miraj where he has acquired the suitable accommodation in the name of his son. His wife has also acquired suitable accommodation bearing CTS No. Extension 235, Shivaji Nagar (South), Miraj, near Sangli. This fact is supported by the averment to the effect that since January 2000 to July 2005 the electricity meter provided to the suit property is not in use. This fact is noted in para 5 of the affidavit with submission that the suit property is located at first floor of the building owned by the petitioner and he occupies the ground floor thereof and, therefore, he is in position to state the said fact. It is pertinent to note that this affidavit is not challenged nor contested and, therefore, I have no doubt whatsoever to hold that the respondent obtained suitable accommodation and, therefore, on that count also the decree passed by the Trial Court becomes executable immediately.

8. In the result, the Rule is made absolute. The petition is allowed in terms of prayer clause (c) and stands disposed of with no order as to costs.

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